CASE SUMMARY

Complaint against the Housing Department for unreasonably laying a communal salt water pipe which runs through their Home Ownership Scheme flats without their knowledge

The Complaint

This Office has received several complaints concerning the above matter. The complainants had purchased the flats of a certain Home Ownership Scheme (HOS) estate in 1997. They claimed that when they took possession of the flats, they found that there was a communal salt water pipe running from the corridor through the kitchen ceiling of their flats to the external wall. They pointed out that the salt water pipe was not shown in the sales brochure. They had complained to the Housing Department (HD) separately about this. In response, the HD only said that according to the provisions stipulated in the Deed of Mutual Covenant (DMC), the complainants could not remove the salt water pipe. The complainants were worried that if the salt water pipe burst, not only the safety of their families would be jeopardized, but losses of their household property would also result. Furthermore, the complainants also considered the exposed pipe an eyesore. Finally, they lodged complaints with this Office separately.

Information provided by the HD

2. According to the HD, the standard design of laying the communal salt water pipe through the flats had been adopted for six HOS estates totalling 30 Harmony blocks at present. On two floors in each block, there were such exposed pipes. The exposed pipe which ran through the kitchens of the complainants' flats was part of the communal salt water pipe of the building.

3. Concerning the design of the pipe, the sales brochure and the responsibility for the repair of the pipe and the expenses thus incurred, the HD had made the following comments:

(a) Design of the pipe

It was the standard design of the Harmony blocks built at that time to lay the salt water pipe through the (complainants') flats. Such design was adopted mainly for the supply of salt water to the whole building. The flats on the top 16 floors (39/F to 24/F) had direct supply of water from the roof cistern while those on the middle floors (23/F to 12/F) and the lower floors (11/F to 1/F) had supply of salt water from the salt water pipe. On 24/F and 12/F, pressure reducing valves used for the adjustment of water pressure were installed in the corridors. On 23/F and 11/F, the salt water pipe ran through the kitchen ceiling of the flats to the external wall. As this design had already been in use for quite some time, the HD would not make any alterations in the design of those HOS blocks which had been built, nor would it bear the cost of improving the outlook of the pipe.

(b) Sales brochure

This was not highlighted in the sales brochure of these HOS Harmony blocks when the flats were put on sale because only the rough layout of each floor was shown in the sales brochure and the pipe, which was located at the ceiling, was generally not shown on the floor plan.

(c) Responsibility for the repair of the pipe and the expenses thus incurred

According to the provisions stipulated in the DMC, the estate management should be responsible for the repair and maintenance of the communal pipes, which were for use by the owners and tenants of the estate, unless they were maliciously damaged, and the owners had to share the expenses incurred in the manner as stipulated in the DMC. As the Housing Authority (HA) had already taken out collective fire and extra perils insurance for the flat owners of the estate, the owner(s) could approach the estate management for assistance when the pipe was found to have been damaged. In the event of a sudden burst of the pipe, the

owner(s) could request the estate management to claim damages from the insurance company on his/their behalf.

Opinions and Conclusion

4. This Office had carefully studied the sales brochure of the HOS estate, in which the complainants had purchased their flats, and found that the location of "the exposed pipes inside the flats" were marked in blue on "the location plan of the exposed pipes and bearing walls inside the flats". This Office would not comment on the design of the pipe, but noted that there was indeed no information therein which indicated the exposed pipe at the kitchen ceiling of the flats on 11/F and 23/F. Therefore, information on the exposed pipe was actually not complete.

5. The HD had explained that as the pipe was located at the ceiling, it was generally not shown on the floor plan. This Office considers the HD's explanation not acceptable. However, this Office does believe that the HD had not deliberately covered up the fact that the pipe is located at the ceiling, nor had it laid the pipe indiscriminately. While the HD had made an effort to provide information which was applicable to all the flats in the sales brochure, it had not highlighted the fact that the flats on two of the floors have exposed pipes inside the kitchens. Nevertheless, this Office still considers that the HD should provide all the information, instead of providing only selected information, for the consideration of the prospective buyers.

6. Having considered the above, The Ombudsman concludes that this complaint is **partially substantiated**. This Office notes that after receiving the complaints lodged by the owners, the HD had already conducted a review and instituted a series of improvement measures. For instance, in the sales brochure of flats for sale under the HOS - Phase 19C, the location of the exposed pipes inside the flats on two of the floors is marked in red so that the prospective buyers know exactly where the pipes lie before they decide whether or not to buy the flats. Furthermore, the HD has also decided to alter the design so that the communal salt water pipes which run through the flats on two of the floors are moved to the external wall of the building. In spite of the above improvement measures, we understand that the affected owners are still worried about the repair and maintenance problem of the pipe in future, in particular the losses that may be caused to them as a result of a burst of the pipe. Therefore, it is incumbent on the HD to make proper arrangements to take out insurance for the affected flats.

7. Concerning the repair and maintenance of the pipes in future, the HD pointed out that as the pipes are communal facilities, the contractor will be responsible for their maintenance in the first year after the pipes are laid . Thereafter, the estate management will be responsible for the repair of the pipes. The HD stressed that all the salt water pipes of the HOS blocks have undergone the pressure test. Under normal circumstances, the chance of the pipes leaking is slim. Furthermore, as the pipes are located at the ceiling, it is also highly unlikely that they will burst as a result of accidental damage. Even if such an accident does occur, as the HA has already taken out collective fire and extra perils insurance for the estate, the owner(s) can very well request the estate management to claim damages from the insurance company on his/their behalf. However, the owner(s) must prove that the burst is not the result of human errors or negligence before he/they can get any compensation. The Ombudsman considers that this is unfair to the owners because it is often very difficult to establish the claim, which would even have to be supported by reports to be prepared by professionals at times. The process is also time-consuming.

8. In order to properly safeguard the interests of the owners so as to alleviate their worries, The Ombudsman considers that the HD should treat the communal salt water pipe which runs through the flats as communal facilities in general and work out with the owners a plan on its regular check-up and maintenance. The HD should also provide proper safeguards for the owners against the losses which may be incurred as a result of a burst of the pipe as part of its on-going efforts committed to the core values of "Caring", "Customer-focused" and "Committed" under the "Management Enhancement Programme".

Recommendations

9. The Ombudsman has made the following recommendations to the Director of Housing (D of H) for consideration:

(a) To draw up a plan on the regular check-up, repair and maintenance of the communal salt water pipe which runs through the HOS flats;

(b) To take out insurance for the household property of the affected owners lest they should suffer losses as a result of a burst of the pipe; and

(c) To offer a written apology to the complainants for failing to show all the exposed pipes in the sales brochure.

Response from the D of H

10. The D of H does not agree to our comments that the Department had only provided selected information as there are at present no statutory guidelines which lay down what information should be included in sales brochures. Concerning the first recommendation that this Office has made, the HD is of the view that while the recommendation is feasible in principle, it can only be implemented with the co-operation of the owners.

11. Besides, the HA and the estate management have already taken out public liability insurance to cover their legal liability for the public (including the owners). Though the HA has no legal or direct liability for the personal property of the owners, the owner(s) can claim damages from the insurer through the HA or the estate management if they suffer any loss of personal property, which is proved to have been caused by negligence of the HA or the estate management. As to the recommendation to take out insurance for the household property of the affected owners, the HD has no intention to make such arrangements for the time being. The HD believes that the present insurance taken out for the estate is already sufficient. It is beyond the scope of the HA's responsibility to take out other insurance for the household property of the owners. Besides, the DMC does not empower the estate management to do so. Nevertheless, the owners may take out insurance for their household property according to their own needs.

12. Finally, it is the standard design of the Harmony blocks to lay the exposed pipes through the flats and relevant information has already been provided in the sales brochure. As the HD had not deliberately deceived the owners, the Department thinks it is not appropriate to make a written apology to the complainants. The HD deeply regrets that the incident has unexpectedly caused such

misunderstanding and inconvenience. However, the Department will learn from this lesson and continue to serve the public whole-heartedly by improving their services.

Final Remarks

13. The Ombudsman opines that no matter whether there are any statutory guidelines which lay down what information should be included in sales brochures, once the HD had decided to provide information on the exposed pipes in the sales brochure, the information provided therein must be complete. As a matter of fact, this is also in line with the legitimate expectations of the buyers. It is unfair to request the owners to prove that the sudden burst of the pipe is not the result of human errors or negligence. This is not the responsibility of individual owners, nor should they be made to bear the consequences of the accident. The fact is that when an accident occurs, it is inevitable that the owners will suffer losses of household property, no matter to what extent the losses incurred will be. Therefore, it is important for the HD to take out insurance for the household property of the owners so that they can get a compensation as soon as possible in case of an accident. This is the most appropriate and practicable way to enable the owners to get a reasonable compensation without having to find out who is to blame for the accident. The HD, as the estate management, should consider to take out insurance for the household property of the owners as soon as possible, in the same way as it has done for other communal facilities. The only difference with the communal facilities concerned in this case is that they are not located in the common area, but in private residence. Also, the HD can consider consulting the views of the owners on the matter.

14. Finally, The Ombudsman considers that the HD should apologize to the complainants for causing them annoyance, disappointment and anxiety because the Department had failed to clearly state all the information on the exposed pipes in the sales brochure. This is the proper way to respond to the complainants.

15. All points considered, The Ombudsman concludes that the conclusion and recommendations in the investigation report should remain unchanged. Finally, The Ombudsman hopes that the D of H

will promptly follow up and actively implement the recommendations in the report.

Latest Development

16. This Office learns from the HD that:

(a) On the recommendation to draw up a plan on the regular check-up and maintenance of the communal salt water pipe, the estate management has already consulted the views of the owners on the proposal of conducting monthly checks on the communal pipes in the corridor and on the entry into the flats concerned for checking the salt water pipes inside. Finally, the estate management has adopted the views of the majority of the owners and decided that, with effect from March 1999, such checks will be conducted on a quarterly basis. Special arrangements can be made for the owners when such need arises.

(b) On the recommendation to take out insurance for the household property of the owners, while the HD considers that the present insurance taken out for the estate is already sufficient, the Department, as the estate management, will consult the views of the owners on this matter. If consent is obtained from the owners, the Department will study the feasibility of such arrangements as soon as possible.

(c) The HD deeply regrets for anxiety and disappointment that were caused by this incident to the concerned owners.

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